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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,897	07/31/2003	John L. Waddell JR.	WADDELL 1	9607
1444	7590	01/24/2006	EXAMINER	
BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303			JOHNSON, STEPHEN	
			ART UNIT	PAPER NUMBER
			3641	

DATE MAILED: 01/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/630,897	Applicant(s) WADDELL ET AL.	
	Examiner Stephen M. Johnson	Art Unit 3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-22 is/are pending in the application.
- 4a) Of the above claim(s) 15 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13, 14 and 17-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 13-22 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. Applicant's election with traverse of species A (directed to an assembly for attenuating shock waves that includes a shock attenuating material that is perlite) in the reply filed on 1/25/2005 is acknowledged.

Claims 15-16 are withdrawn from consideration as being directed to non-elected species. Claims 13-14 and 17-22 read on the elected species and an action on these claims follows.

2. Regarding claims 13-14 and 17-21, the phrase "optionally" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

This is in regard to the terminology "optionally" in claim 13, sections (a) and (b).

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 13 and 17-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Colle (788).

Colle (788) discloses an assembly comprising:

- | | |
|--|-----------------------|
| a) a first film of a flexible resin material; | 54; col. 4, lines 3-8 |
| b) a second film of a flexible resin material; | 53; col. 4, lines 3-8 |
| c) pockets; | see figs. 1, 2 |
| d) a plurality of seams; and | 57 |
| e) a shock wave attenuating material. | col. 4, lines 23-42 |

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5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 13 and 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Munch (706) in view of Colle (788).

Munch (706) discloses an assembly comprising:

- | | |
|--|---------------------|
| a) a first film of a flexible material; | 5 |
| b) a second film of a flexible material; | 3 |
| c) pockets; | see figs. 1-3 |
| d) a plurality of seams; and | col. 3, lines 17-26 |
| e) a shock wave attenuating material. | col. 3, lines 40-67 |

Munch (706) applies as recited above. However, undisclosed are flexible film member materials that are a polyamide resin. Colle (788) teaches flexible film member materials that are a polyamide resin (col. 4, line 4). Applicant is substituting one type of flexible film material for another in an analogous art setting as explicitly encouraged by both the primary and secondary references (see col. 1, lines 8-10 of Munch; and col. 4, lines 3-8 of Colle). It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Colle to the Munch assembly and have an assembly with flexible film members of a particular type of material.

7. Claims 13 and 17-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Poux (302).

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Poux (302) discloses an assembly comprising:

- a) a first film of a flexible polyamide resin material; 10 or 7
- b) a second film of a flexible polyamide resin material; 11 or 8
- c) pockets; see figs. 6, 7, 8
- d) a plurality of seams; and 6; col. 3, lines 40-57
- e) a shock wave attenuating material. col. 4, line 7

8. Claims 13, 17-18, and 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Herran (961).

Herran (961) discloses an assembly comprising:

- a) a first film of a flexible polyamide resin material; 14
- b) a second film of a flexible polyamide resin material; 12
- c) pockets; see figs. 1-3
- d) a plurality of seams; and 16, 18
- e) a shock wave attenuating material. col. 2, lines 54-57;
col. 4, lines 61-66

9. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Herran (961) in view of Symons (690).

Herran (961) applies as recited above. However, undisclosed is a shock wave attenuating material that is perlite. Applicant is substituting one enclosed aggregate material for another in an analogous art setting as explicitly encouraged by both the primary and secondary references (see col. 4, lines 63-66 of Herran; and col. 5, lines 12-20 of Symons). It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings

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of Symons to the Herran assembly and have an assembly with a different type of enclosed aggregate material.

10. Applicant's arguments with respect to claims 13-14 and 17-22 have been considered but are moot in view of the new ground(s) of rejection.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

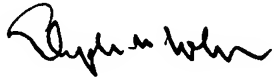
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 571-272-6877 and whose e-mail address is (Stephen.Johnson@uspto.gov). The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571-272-6873. The Central FAX phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 800-786-9199.



STEPHEN M. JOHNSON
PRIMARY EXAMINER

Stephen M. Johnson
Primary Examiner
Art Unit 3641

SMJ
January 19, 2006